

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**NORMAN JARRETT, and  
OTHERS SIMILARLY SITUATED,  
and JERRY THURMON,  
Plaintiffs,**

**VS.**

**POWER LINE SERVICES,  
INC., and TOTAL ELECTRICAL  
SERVICE & SUPPLY CO.,  
Defendants.**

**§ CIVIL ACTION NO. 4:12-cv-00509**

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**COLLECTIVE ACTION REQUESTED**

**ASSIGNED TO THE HONORABLE  
VANESSA D. GILLMORE**

## JURY TRIAL DEMANDED

**CONSOLIDATED WITH**

**JERRY THURMON, WAYNE  
THURMON, and OTHERS SIMILARLY  
SITUATED,  
Plaintiffs,**

**VS.**

**POWER LINE SERVICES, INC.  
TOTAL ELECTRICAL SERVICE &  
SUPPLY CO., and SUN ELECTRIC  
SERVICES, INC.,  
Defendants.**

§ **CIVIL ACTION NO. 4:11-cv-1365**

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**PLAINTIFF JERRY THURMON'S SUR-REPLY TO DEFENDANTS'  
RULE 56(D) MOTION FOR CONTINUANCE**

Despite Defendants' attempts to muddy the water by citing its general policies, the evidence is in, the facts are conclusive and uncontradicted, and 16 months has elapsed. Two out of five witnesses involved in the deductions to Plaintiffs and other Substation Superintendents have stated that they would "automatically" deduct Superintendents if they failed to turn in a receipt. Ex.1, Payne 37:22-38:1; Ex. 4, Chappell ¶¶ 3-6; Ex. 17. Two others (Armando Renteria and Crissy Salcido) who participated in the deductions worked for the company as recently as February, 2012, yet they have not stepped forward to give contradicting affidavits to any of the testimony in this case. Ex. 3 Wasson, 34:21-35:4, 115:25-116:1; Ex.4; Ex. 17. The fifth is a former Vice-President who Defendants have not sought out. Defendants have no evidence to contradict the "**actual practice**" of deductions of Plaintiff's managers.

Imagine in a gender discrimination suit that the supervisor admitted terminating the victim because of gender and defendants attempted to rebut the proof of discrimination by citing their Anti-Discrimination Policy. This is Defendants' argument applied in the FLSA context.

An Anti-Discrimination policy wouldn't shield a company whose manager admitted discrimination from summary judgment and neither should Fred Wasson's testimony regarding Defendants' alleged policies in the face of Plaintiffs' **managers'** admissions and the silence of witnesses who have been employed by Defendants during the pendency of this case. Summary Judgment is appropriate at this time on the issue of Plaintiff Jerry Thurmon not being paid on a "salaried basis" between May 1, 2009 and July 29, 2010.

Respectfully submitted,

/Michael A. Starzyk/

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing has been delivered to Defendants' counsel in accordance with the Federal Rules of Civil Procedure on the 17th day of September, 2012:

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